



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

obtaining judgment may levy execution.<sup>22</sup> The majority of courts are therefore but logical in granting him the right of further protecting himself by buying in at the foreclosure or execution sale. The common statement that a director cannot create relations antagonistic to the interests of the corporation, would seem too broad a generalization.

---

ESTOPPEL OF A CESTUI QUE TRUST BY THE TRUSTEE'S MISREPRESENTATION. — That an equitable mortgagee of realty is not always safe in relying on the apparent regularity of title-deeds, is shown by a recent English case. *Capell v. Winter*, [1907] 2 Ch. 376. A trustee with power of sale gave a deed of trust property containing a recital of full payment of the purchase price, as security for a personal debt. The creditor, with notice of the trust, deposited the deed by way of equitable mortgage with the defendant, who had no notice of the trust or of non-payment. The court decided that the equities of the beneficiaries of the trust and of the equitable mortgagee were equal in other respects and that the equity of the beneficiaries, being prior in time, prevailed. It is clear that if a trustee retains the legal title, he cannot by a breach of trust create an equity in a third person superior to that of the *cestui que trust*.<sup>1</sup> For there the claim of the *cestui* is directly against the fraudulent trustee and, having been guilty of no misconduct himself, he can assert his beneficial ownership. But if a *cestui que trust* or other equitable claimant, by word or conduct, causes the belief that the trustee is the sole beneficial owner, he will be deferred to a subsequent equitable encumbrancer who has acted on the faith of such misrepresentation.<sup>2</sup>

It has been held that where a vendor delivers a deed containing a false receipt for the purchase money,<sup>3</sup> an equitable mortgagee who makes advances relying on the misstatement has a claim superior to the vendor's lien.<sup>4</sup> The law of agency supplies an analogous principle.<sup>5</sup> And where the vendor was a trustee with power of sale the equitable mortgagee was likewise protected,<sup>6</sup> on the ground that a claim on a third party — the vendee — superior to that of the trustee is also superior to that of the *cestui*, who must establish his rights through the trustee. The present case seems indistinguishable on principle: in both a trustee executed a conveyance with a fraudulent receipt of the purchase money; in both a third party was induced by this false statement of fact to advance money to the grantee. The court here declares the principles of the former decisions to be confined to cases of vendors' liens, and so inapplicable where a *prima facie* sale is made to conceal a mortgage, and expressly denies that the true basis is estoppel. There seems, however, little difference in saying that the equitable mortgagee is protected because he relied on a misrepresentation of fact, as stated in the earlier cases, and that the *cestui* is estopped from asserting a claim

---

<sup>22</sup> *Deane v. Hodge*, 35 Minn. 146; *Rollins v. Shaver Co.*, 80 Ia. 380.

<sup>1</sup> *Shropshire Ry. Co. v. The Queen*, L. R. 7 H. L. 496 (an equitable mortgage of stock).

<sup>2</sup> *Rice v. Rice*, 2 Drew. 73.

<sup>3</sup> This is by statute sufficient evidence of payment in favor of a subsequent purchaser. 44 & 45 VICT., c. 41, §§ 54, 55.

<sup>4</sup> *Bickerton v. Walker*, 31 Ch. D. 151. See *In re Castell*, [1898] 1 Ch. 315.

<sup>5</sup> *Brockelsby v. Building Society*, [1895] A. C. 173.

<sup>6</sup> *Lloyds Bank, Ltd. v. Bullock*, [1896] 2 Ch. 192.

superior to that of one who has been deceived by the trustee. The nature and foundation of the defense, then, is true estoppel,<sup>7</sup> and therefore the absence of a vendor's lien is immaterial; the trustee is estopped not only from showing that the purchase money had not been paid, but also that the transaction was not in fact a sale, as it purported to be. And since the trustee's right of action is barred, the *cestui's* is also barred.<sup>8</sup> It is submitted, therefore, that the present decision is unfortunate in its effects as giving further grounds of insecurity to equitable mortgagees, and indefensible in principle.

EQUITY JURISDICTION AS TO PERSONAL RIGHTS. — It is often stated that the province of chancery is to protect only property rights,<sup>1</sup> by which it is meant that the courts will not entertain bills alleging injury to personal rights — to life, limb, or reputation — or to status. Perhaps this doctrine originated in the fact that the chancellor was first called on to interfere when the law of real property was changing with the decay of feudalism, and later when the modern commercial law was coming into being; and since the growth of the new practice was regarded with hostility by the common law, which was particularly well developed as to personal rights, it was natural that there should be a tendency to hedge and to limit equity's field.<sup>2</sup> In a recent New Jersey case the court enjoined the use as evidence of a fraudulent birth certificate and ordered it cancelled on the records, but, while finding a technical property right threatened,<sup>3</sup> clearly intimated that an individual has rights other than property rights, which he can enforce in a court of equity, and that even without the threatened injury to property rights the complainant was entitled to relief. *Vanderbilt v. Mitchell*, 67 Atl. 97 (Ct. Err. and App.).

A tendency to enlarge the jurisdiction of chancery in the direction thus indicated has steadily been manifesting itself. Protection has been given the relative of a dead man against the removal of his body, the court expressly stating that no true property right was involved.<sup>4</sup> A right of privacy has also been recognized,<sup>5</sup> and that not to have private sketches<sup>6</sup> or "non-literary" letters<sup>7</sup> made public. The courts have sometimes based their decisions on the ground of a breach of confidence<sup>6</sup> and sometimes on that of an injury to a property right in the letters,<sup>7</sup> but it would seem that in neither case do they give the real reason. That they will forbid the breach of confidence committed in making public the letters or pictures means no more than that they recognize the right to keep them private, the real motive for their acting being to prevent the complainant from experiencing unpleasant notoriety; in the other instance, it is clear that they are not so

<sup>7</sup> See *Rimmer v. Webster*, [1902] 2 Ch. 163 (approving *Rice v. Rice*, *supra*, as "pure estoppel").

<sup>8</sup> *Cf. Ex parte Dale*, Buck 365.

<sup>1</sup> See *In re Sawyer*, 124 U. S. 200, 210; 1 Pom., Eq. Jurisp., 3 ed., 104, 123.

<sup>2</sup> *Cf. Pomeroy, ibid.*, 104.

<sup>3</sup> *Walter v. Ashton*, [1902] 2 Ch. 282; *Meyer v. Phillips*, 97 N. Y. 485. (Relief granted on a threatened invasion of property rights.)

<sup>4</sup> *Pierce v. Proprietors of Swan Point Cemetery*, 10 R. I. 227.

<sup>5</sup> *Pavesich v. New England Life Insurance Co.*, 122 Ga. 190. *Contra, Roberson v. Rochester Folding Box Co.*, 171 N. Y. 538 (abrogated by N. Y. Laws, 1903, c. 132).

<sup>6</sup> *HARV. L. REV.* 193; *cf. 15 ibid.* 227.

<sup>7</sup> *Prince Albert v. Strange*, 1 Macn. & G. 25.

<sup>7</sup> *Woolsey v. Judd*, 4 Duer (N. Y.) 379; *Gee v. Pritchard*, 2 Swanst. 402.